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**FILED**

**SEP 23 1946**

**CHARLES ELMORE GROPL  
CLERK**

**No. 394**

**IN THE**

# **Supreme Court of the United States**

**OCTOBER TERM, A. D. 1946.**

**THE TRUST COMPANY OF CHICAGO, Administrator of Estate of Elizabeth Palmer Smith, Deceased, and JASON PAIGE, as Executor of Estate of Carrie E. Paige, deceased and others,**

**Petitioners,**

**VS.**

**CITY OF CHICAGO, and others,**

**Respondents.**

Petition for writ of certiorari to Appellate Court of Illinois, First District.

There heard on Appeal from Circuit Court of Cook County to Supreme Court of Illinois, to November Term, 1942 and transferred.

Honorable John Prystalski,  
Chancellor.

Mandamus and Class Suit in Equity to Administer a Trust.

## **SUPPLEMENTAL REPLY TO ANSWER BY RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI.**

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**WEIGHTSTILL WOODS,**  
Attorney for Petitioners.

**HORACE RUSSELL,  
LAWRENCE C. MILLS,  
WILLIAM D. WOLLESEN,**  
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## SUPPLEMENTAL REPLY TO ANSWER BY RESPOND- ENTS TO PETITION FOR WRIT OF CERTIORARI

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MAY IT PLEASE THE COURT:

Some days after the Reply by Petitioners had been filed in this Court, and on September 19, 1946, the Supreme Court of the State of Illinois, filed an Opinion prepared by Chief Justice Gunn, in case of *Woodruff, Appellant v. The City of Chicago, Appellee*, Docket No. 29375. The opinion was unanimous and without dissent. From that Opinion we quote as follows:

“ \* \* \* Appellee (City of Chicago) contends there never was an abandonment, and under this theory

no cause of action has ever accrued. And likewise, the contention is made, if abandonment has been established, that it occurred more than five years ago. It is unnecessary to discuss these inconsistent positions for the simple reason that funds received by the city from a special assessment proceeding are considered trust funds, (*Conway v. City of Chicago*, 237 Ill. 128; *Rothschild v. Village of Calumet Park*, 350 Ill. 330,) and the statute of limitations cannot be urged against an accounting for trust funds. *Barnes v. Barnes*, 282 Ill. 593."

This language is directly in point and fully sustains the position of Petitioners in this case. It is the latest expression as to equitable right, in the current language of the Supreme Court of the State of Illinois. Their Opinion is given in relation to two improvements in the City of Chicago, wherein both condemnation and special assessment procedures were involved substantially as they are in the record now before this Court.

In this *Woodruff* case the Appellate Court denied relief just as it has done to Petitioners in this record now before this Court. In the *Woodruff* case the Supreme Court of Illinois granted leave to appeal to that Court exactly contrary to what they did to your Petitioners on this similar record. This demonstrates an undeniable inequality, a wilful discrimination, and contrary ruling upon a like situation, in violation of the Fourteenth Amendment to the Constitution of the United States. This contrast constitutes a current demonstration that the ruling against your Petitioners was merely arbitrary and wholly lacking in any due process of law by the Courts of Illinois.

Furthermore the pleading in this *Woodruff* case is stated by said Opinion of the Supreme Court of Illinois to be

"An action at law was instituted by Joseph B. Woodruff against the City of Chicago to recover two special assessments paid by him to the City of Chicago in the years 1927 and 1928."

In other words, where an accounting is involved with relation to condemnation and special assessment monies, the Supreme Court of Illinois now says that it makes no difference whether the suit be filed at law or in chancery. They now say and they now confirm in this *Woodruff* case, that because the monies involved are trust funds, the form of the action is not material and recovery will be granted to the plaintiff under any and every procedure.

This means that the ruling by the Appellate Court against Petitioners not only was wrong, but was a clear violation of the Constitution, not only because they refuse to consider chancery procedure for an accounting with relation to trusts for money, but that they were wrong and contrary to the Constitution, in relying upon any decisions with relation to statute of limitations, whenever either at law or in chancery *the plaintiff relies upon a trust and an accounting*.

Petitioners submit that their record from the beginning is bottomed upon the trust theory and the trust accounting, and that they have established by this record a complete denial of their rights under the Fourteenth Amendment to the Constitution of the United States.

Your Petitioners renew the prayers of their Petition.

Respectfully submitted,

WEIGHTSTILL WOODS,

*Attorney for Petitioners.*

HORACE RUSSELL,

LAWRENCE C. MILLS,

WILLIAM D. WOLLESEN,

Of Counsel.